

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 01 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BING WILLIAM AHENAKEW,

Defendant - Appellant.

No. 07-30374

D.C. No. CR-06-00115-CCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, District Judge, Presiding

Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Bing William Ahenakew appeals from his jury-trial conviction and 37-month sentence imposed for assault resulting in serious bodily injury to an individual under 16 years of age, in violation of 18 U.S.C. §§ 113(a)(6), (a)(7), and 1153(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Ahenakew contends that the district erred by denying his motion for acquittal under Federal Rule of Criminal Procedure 29. In particular, he contends that the government did not establish beyond a reasonable doubt that: (1) he was responsible for the injuries of the victim; and (2) serious bodily injury occurred. We conclude that the evidence, when viewed in the light most favorable to the government, was sufficient such that any rational trier of fact could have found that Ahenakew was responsible for the injuries beyond a reasonable doubt. *See United States v. Si*, 343 F.3d 1116, 1124 (9th Cir. 2003). We further conclude that the government sufficiently established, through the testimony of two expert witnesses, that the victim suffered from serious bodily injury. *See id.*; *see also United States v. Johnson*, 637 F.2d 1224, 1246 (9th Cir. 1980).

Ahenakew next contends that the district court erred by applying a two-level vulnerable victim upward adjustment to his sentence. We conclude that the district court did not err in finding that the victim's extreme youth and small size, among other factors, rendered him an unusually vulnerable victim. *See United States v. Wright*, 373 F.3d 935, 943 (9th Cir. 2004).

AFFIRMED.